

IN THE UNITED STATES DISTRICT COURT For THE
MIDDLE DISTRICT OF ALABAMA

2008 MAR 19 A 9:33

James McGraw, Jr.
Plaintiff

DEBRA P. HACKETT, CLERK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

VS

CASE No: 2:08cv189-MEF

Commissioner Robert Allen
Governor Bob Riley
Defendant

MOtion For AN EMERGENCY TEMPORARY RESTRAINING
ORDER AND PERMANENT ISSUANCE OF A PRELIMINARY INJUNCTION

COMES now the plaintiff James McGraw, Jr., [hereinafter McGraw] pursuant to Rule 65 (a) and (b) of the F.R.Cv.P., And request the granting of an emergency temporary Restraining order transferring McGraw to St. Clair Correctional Facility Segregation unit to prevent irreparable mental and physical damage from the new terrorist within the Alabama Dept. of Corrections [A Doc], Gang Members. As the defendants have Admitted they are unable or unwilling to take the necessary actions against identifiable gang members to prevent the violation of McGraw's right Against cruel and unusual punishment on the following grounds to wit:

STATEMENT OF THE CASE AND FACTS

1. In the year of 2004 McGraw was transferred to the Segregation unit of Holmes Correctional Facility. Upon arriving there gang members joined forces-

with a homosexual named Costello, who McGuire wrote a newspaper article about murdering a man and the homosexual environment of Holman Prison.

2. The gang members declared McGuire as wanted by them and started a psychology strategy called Killing behind the doors. Whereas they take homosexual caricatures and call McGuire the caricatures to deprive him of sleep, social discord and to discredit him with other inmates, as a parish.

3. A former gang member a young man McGuire didn't know by the name of Kenneth William was assigned in the cell next door to him K-4. Got wind of what the gang members were about to do to McGuire and out of the blue told McGuire to turn to the Christian daily dress booklet's given to them by the chaplain and to read January 21, 2008. It dealt with strength and courage that Dr. Martin Luther King sought from God when he was afraid. The former gang member 28 years of age Kenneth William's was trying to prepare McGuire for the nefarious conduct the gang members were going to assault him with. (Exhibit I)

4. McGuire was transferred back to Holman Prison January 18, 2008. Two of the gang members that were in the segregation unit in 2004 known to him as Reggie now housed in cell 56 on the disciplinary segregation side of the unit and Luke - Mandorine Thomas. were still in the segregation unit and began the verbal assault upon McGuire once more 24 hours a day and began to recruit other gang members to assist them. Calling McGuire homosexual caricatures to deprive him of sleep, social discord and to discredit him with other inmates, as a parish. The gang members Reggie and Mandorine Thomas organize this psychology method which gang members call Killing behind the doors, is using the work time and

runner system to pass notes to each other keeping the 24 hour a day psychological Assault going upon Mc Gric.

5. Mc Gric has requested of all supervisor subordinates to protect him, transfer him, take disciplinary action against the gang members and all have failed and refused to take any actions. They have even drawn smiling faces on his written complaint and accused him of just wanting a transfer and creating a problem.

6. On the 19th day of February, 2008 Mc Gric filed a complaint with defendant's Commissioner Robert Allen and Governor Bob Riley requesting protection. To the date of this legal filing the defendant's have failed and refused to protect him from the gang members psychological Assault.
(Exhibit II)

GROUND FOR RELIEF

The defendant's have a constitutional obligation to protect Mc Gric while in the care, custody and control in the Missouri Dept of Corrections, [ADOC].

Mc Gric has requested emergency relief on the grounds he is subject to psychological injury by gang members, who are subjecting him to physical injury in sleep deprivation, excessive high blood pressure, ulcer pain due to stress, paranoia and psychological deterioration.

Ordinarily, the injury is a violation of an eighth amendment claim the injury is obvious. But not Always. This does not preclude suits by prisoners under the Eighth Amendment grounded solely on claims of psychological in-

jury". The Constitution "does not countenance psychological torture ^{merely} because it fails to inflict physical injury". Hudson v. McMillian, 503 U.S. 1, 8, 112 S.Ct. 995, 1000, 117 L.Ed. 2d 156 (1992).

In Babcock v. White, 102 F.3d 267, 271 (7th Cir. 1996), the Seventh Circuit Court of Appeals discussed the type of injury actionable under Section 1983. Babcock pleaded with prison officials to protect him from members of a gang known as the Mexican Mafia. Even though never assaulted by anyone, he sued prison officials under section 1983 for their purported deliberate indifference to his safety concerns. The district court grant summary judgment to the individual defendants.

On Appeal Babcock in his main brief, (sic) in Doe v. Welborn, 110 F.3d 520, 524, (7th Cir. 1997) Citing Babcock therein Doe alleges, "the damages [are] the terror, psychological harm and deterioration, and suicide attempts that come from living with the constant threat of death. These damages are compensable under the Eighth Amendment." But the court found not in Doe's case as he showed no injury.

But, the Doe Court held in footnote 3 on page 524, "that injunctive relief to prevent a substantial risk of serious injury from ripening into actual harm", was available.

McGraw's claim is made simply for injunctive relief, but is actionable as well for compensable damages. McGraw is alleging that defendants are failing to protect him from the gang members' psychological assault by not transferring him. But McGraw has alleged that he ^{has} in fact suffered physical damages -

of sleep deprivation, excessive high blood pressure that causes dizziness, head aches and sight impairment, ulcer pain due to stress, paranoia and psychological deteriorations. These damages are compensable under the Eighth Amendment. Id.

McGraw submits to this Court the Affidavit of former gang member ^{Kenneth} ~~Kenneth~~ Williams. As evidence in support of the violation of his Eighth and Fourteenth Amendment rights by Defendant Robert Allen and Gov. Bob Riley, William Affidavit under oath that gang member Reggie and others have declared McGraw violated. McGraw cites a brief portion as an excerpt from Kenneth Williams's Affidavit, the remainder can be reviewed as Exhibit I:

"I'm a prison gang member and got wind that gang members known to me as Reggie housed in cell 56 disciplinary segregation was spreading around that McGraw was violated and recruiting others and home boys. To start the moral game we all killing behind the doors to run an individual crazy. I didn't know McGraw but as an older guy had learn to respect him from simply talking with him. As being a prison gang member I knew what they were about to put him through and I knew no one was going to help or tell on them..."

McGraw's claim of psychological injury does reflect the deprivation of the minimal civilized measures of life's necessities". As McGraw has shown physical harm and the extreme psychological harm he is being subjected to by gang members and the defendants refusal and failure to protect, that supports a claim for damages under the Eighth Amendment. Farran v. Brennan, 511 U.S. 825, (1994).

Due to the seriousness of the hostile environment the defendant's have Mr. Gordo housed in and refusal to protect, unwilling to protect or unable to protect, Mr. Gordo is requesting that an immediate order be issued transferring him to St. Clair Unit. As Mr. Gordo has a right to be secure in his person from violence, physical abuse and contagious disease. See: Nicholson v. Chockaw County, Ala. 448 F. Supp. 295 (D.C. Ala. 1980); Hopkins v. Baston, 742 F.2d 1308 (C.A. 11 Ala. 1984) and Moore v. Morgan, 922 F.2d 1553 (C.A. 11 Ala. 1991).

FURTHER RELIEF REQUESTED

1. That a TRO be immediately granted before defendant's Attorney can be heard, removing Mr. Gordo and prison gang member Kenneth Williams from Holman Correctional Facility. Before further irreparable mental and further physical injury can be inflicted upon Mr. Gordo by the gang member's psychological tactic of Killing behind the doors, 24 hours a day. Transferring Mr. Gordo to St. Clair Unit and swapping his enemy inmate Robert Counsel back to Holman Unit.

(A) That inmate Kenneth Williams has been threaten for violating the gang code by providing testimonial evidence in Mr. Gordo's behalf, and can no longer be housed in general population or segregation at Holman Unit and must be transferred.

2. That a hearing be held thereafter within 10 days for the granting of a permanent preliminary injunction be issued preventing the ADOC from transferring and housing Mr. Gordo or Kenneth Williams at W.C. Holman Correctional Facility during their periods of incarceration within the ADOC.

3. That Mc Graw be Appointed Counsel.

4. That Mc Graw and make Kenneth Williams be transported to the Court for and having to give testimony and other witnesses, such as Officer Ronald Williams, makes Antonio Wpcomb, Erby Forey # 199666 and Santos Bradford # 200884.

I hereby swear under the Penalty of perjury that the Aecments and watters contad made by James Mc Graw, Jr are true and correct to the best of my knowledge and belief.

James Mc Graw 3/1/08

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of March, 2008, I have served A copy of this "Motion for an Emergency Temp. Res. et", upon the following parties via, United States Mail postage prepaid:

Comm. Robert Allen
Attn: Dept of Corrections
P.O. Box 301501
Montgomery, AL 36130-1501

Governor Bob Riley
Governor's Mansion
Montgomery, AL 36104

James Mc Graw
117345-K-3
Holman Unit 3400
At more, AL 36503

AFFIDAVIT OF Kenneth Williams

Before me a notary public in and For
 Said county and state, personally Appeared Kenneth Williams
 Being duly sworn, deposed and says an oath that the Agreements
 contained In the Fore going are true to the best of his ability, ~~and~~
 Information, knowledge and belief as Follows:

My name is Kenneth Williams #219273 I am over the
 age of twenty one and state that I'm housed At Holman prison In cell
 K-4 next door to cell K-3 that houses Inmate James McConico JR
 Since About January 18, 2008. I'm a prior gang member and got
 wind that gang member known to me as Reggie housed In cell 56
 disciplinary segregation, was spreading around that McConico was
 violated and recruiting others and homeBoys. to start the mind game
 we call Killing Behind the Doors to run an Individual/ crazy. I
 didn't know McConico But as an elder guy had learn to respect him
 From simply talking with him. So Being a prior gang member I
 knew what they were about to put him through And I knew
 no one was going to help him or tell on them. So I told him to
 go turn to our Christian Daily Bread Booklets given to us,
 January 21, 2008 where It talked about DR. Martin Luther
 King confessing to the lord he was weak as the people looked
 to him For leadership. God told him to stand up For
 Righteousness, stand Fortwith and God would Be at his Side.
 I knew this was all I ~~could~~ could do For Mr McConico
 Because my Generation has lost sight of respect For elders
 (1) "Exhibit I"

The gang-members are working in 3 shifts to abuse McConico and they organize how they will perform this each day by passing notes with the hall runners and going on the walk. they create their greatest verbal abuse doing showering, when the nurses come around, when the officers aren't in the cell block and late at night. McConico is up all times of night listening because they keep calling out his name and asking me did I hear Reggie again. McConico didn't know who Reggie was walking to the shower calling him hoe's Fuck Boy's and Bitches, I told him who the guy was. Reggie and the others favorite use of words is he's a Fuck nigger, he's been fucked, James McConico is a Fuck Boy, his homeboys said it.

McConico is losing it slowly as the embarrassment, stress and lack of sleep is breaking his spirit, one day his voice broke and was forcing back tears as he told me he didn't even know these guys. the gang members use the ~~the~~ deceptive claim that McConico is talking about their mama to get the others in the cell block not to say anything against them. But I have been the cell next door everyday since McConico was put in K-3 and not once has he said anything to the voices calling him names or Reggie doing the same.

~~Kimberly Williams~~

Kenneth Williams

Sworn to and subscribed before me on this the 21 day of

FEB

2008



Charlie Portis

My Commission Expires May 3, 2010

my commission expired

notary public

(3)

Fr: James McGuire, Jr.

#17395-K-3

Holman Unit 3700

Atmore, AL. 36503

To: Governor Bob Riley

Governor's Mansion

Montgomery, AL 36104

To: Commissioner Richard Allen

Alabama Dept. of Corrections

P.O. Box 301501

Montgomery, AL. 36130-1508

DA: 2/11/08

Re: Complaint due to gang members harassment and the failure of the Holman Unit Administration to take any action.

COMPLAINT

McGuire has filed two complaints with the principle parties responsible for the security and his protection in the segregation unit at Holman Correctional Facility, Warden Grant Culliver and Captain Bishop. About the verbal abuse and sleep deprivation he is being subject to by gang members 24 hours a day. Two or three years ago McGuire wrote an article in the news paper about the -

Senseless Killing of A man by two homosexual At Holman Prison And the homosexual environment. Many of the gang member's out of the Mobile Area Are gay And supported the sisters that committed this murder. The gang members who have declared Mc Gwio violated, As gang member cell it, is known to him As Reginald (Reggie) Assigned to cell 56 disciplinary segregation side, last name unknown to me As of February 28, 2008. And one named Flute, his nick name.

In the year 2008 Mc Gwio was returned to the Holman segregation unit January 18, 2008 And the gang members initiated A 24 hour A day verbal Assault with numerous other gang member's aiding And assisting him using Mobster homosexual caricatures to deprive him of sleep, social disband, And to discredit him with other prisoners, As A prison.

Mc Gwio requested of Warden Calliver And Captain Bishop to bring this gang member And him to their office to resolve this situation on the 12th And 14th days of February, 2008, both negligently failed to take any action. The gang members named Reginald And Flute have recruited other gang members to assist them in the psychology method gang members all Killing behind the doors using the walk time And Review system to pass notes to organize this verbal Assault upon Mc Gwio.

All segregation officers And supervisors when going around the unit doing distribution of medication go right by Reginald's cell And the majority of the gang members partaking in the refractory conduct in the disciplinary segregation side of the unit.

Inmates Reginald and Fluke for a month have verbally stated openly that Conisco is a hoe or gay and a host of other homosexual caricatures in front of the female and male nurses. The supervisor's and officers have listen to this violation of AR 403 creating a institutional security safety hazard, and have not reported it, written one incident report of the gang activity or taken disciplinary action against the inmates.

The negligent acts of the correctional officers, Culliver and Bishop has medically effected McConico as his high blood pressure is elevated. Due to the lack of sleep and stress caused by the gang members verbal assault on him and psychology torture of him to enforce their violation of McConico. These violent acts of the gang members violate McConico's Eighth and Fourteenth Amendment rights and the neglect is knowingly and willfully by Culliver, Bishop and the segregation officers on all three segregation shifts at Holman segregation unit.

This is a rampant problem with gang members throughout the Alabama Dept. of Corrections, being covered up, because the department has no facility in place like other states to house these violent gang members in. This is the second attack McConico has been subject to within the segregation unit at Holman unit within the past two years or so and the supervisor's were aware of this danger before transferring McConico to Holman unit segregation unit.

I'm requesting one of the following forms of relief be provided to enforce McConico's constitutional rights:

- (1) Consultation with the gang members known as Reginald and Fluke specifically -

Reynold in cell 56 of disciplinary segregation,

(2) Disciplinary action and retraining of the segregation officers in gang activity before some inmate loses his life;

(3) Transfer of Mc Graw back to St. Anne Unit and his enemy Robert Counsel is transferred back to Helms Unit immediately,

(4) Suspension of all privileges including walking until gang activity cease,

(5) Disciplinary action against all identifiable gang members that the Correctional officers have ignored,

(6) Increase funding to build a max security facility for housing of violent gang members.

For Mr. Gf

cc: William Grant Culliver
Captain Bishop